PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY 4:15-1833

United States District Court	District
Name (under which you were convicted): Jose Albert Castro	Docket or Case No.: CP-67-CR-0000463-2010
Place of Confinement: SCI-Greene	Prisoner No.: JV-6819
Petitioner (include the name under which you were convicted) Jose Albert Castro	v. Respondent (authorized person having custody of petitioner) Robert Gilmore
The Attorney General of the State of Pennsylvania	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Court of Common Pleas, of York County.

   (b) Criminal docket or case number (if you know): CP-67-CR-0000463-2010

2. (a) Date of the judgment of conviction (if you know): September 16, 2010

   (b) Date of sentencing: November 30, 2010

3. Length of sentence: Mandatory Life

4. In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☑

5. Identify all crimes of which you were convicted and sentenced in this case: first-degree murder

6. (a) What was your plea? (Check one)

   (1) Not guilty ☑
   (2) Guilty ☐
   (3) Nolo contendere (no contest) ☐
   (4) Insanity plea ☐

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? ____________

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☑ Judge only ☐

7. Did you testify at a pretrial hearing, (trial), or a post-trial hearing?

Yes ☑ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☑ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Court of Common Pleas, York County

(b) Docket or case number (if you know): Unknown

(c) Result: Post Sentence Motion denied

(d) Date of result (if you know): May 6, 2011

(e) Citation to the case (if you know): Com. v. Jose Albert Castro, No. CP-67-CR-0000463-2010.

(f) Grounds raised: Mr. Castro is not in possession of All copies of his legal documentation - Respectfully in Clarification, please refer to the Superior Court-Memorandum-Decision No. 1682 MDA 2013, filed February 9, 2015. At page 2. Attached hereto.

(g) Did you seek further review by a higher state court? Yes ☑ No ☐

If yes, answer the following:

(1) Name of court: Superior Court - Pa. Supreme Ct. and certiorari To supreme ct. U.S.

(2) Docket or case number (if you know): Unknown

(3) Result: Super court denied Relief. Pa. Supreme ct. denied Per Curiam. And supreme court of the United States, upon certiorari, denied Per Curiam.

(4) Date of result (if you know): Please refer To Answer At No. 9(f)

(5) Citation to the case (if you know): Please refer To Answer At No. 9(f)

(6) Grounds raised: Please refer to Answer At No 9(f)

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☑ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): Please refer to Answer at (f).

(2) Result: Please refer to Answer at (f).

(3) Date of result (if you know): unknown

(4) Citation to the case (if you know): unknown

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☑ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Court of Common Pleas, York County

(2) Docket or case number (if you know): CP-67-CR-0000463-2010

(3) Date of filing (if you know): January 28, 2013

(4) Nature of the proceeding: pro se Post Conviction Relief Act Petition

(5) Grounds raised: Trial counsel was ineffective failing to show the jury videos taken by cameras owned by the Community Progress Council, showing a different individual at the crime scene immediately after the murder occurred.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☑

(7) Result: N/A

(8) Date of result (if you know):

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: N/A

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐

(7) Result: N/A

(8) Date of result (if you know):

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Please Refer To The Attached - Supplemental Pages

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): In Answer; Please Refer To The Attached Supplemental Pages

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?
Yes ☑ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Collateral Relief

Name and location of the court where the motion or petition was filed: Court of Common Pleas York County - PCRA Court.

Docket or case number (if you know):

Date of the court's decision: August 28, 2013

Result (attach a copy of the court's opinion or order, if available): Dismissed

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☑

(4) Did you appeal from the denial of your motion or petition?

Yes ☑ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: PA. Superior Court

Docket or case number (if you know): NO. 1682 MDA 2013

Date of the court's decision: February 9, 2015

Result (attach a copy of the court's opinion or order, if available): Denied / Affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO: In Answer; Please Refer To The Attached Supplemental Pages.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner seek Review and Constitutional Remedy pursuant To A Gateway Claim of Actual Innocence

(b) If you did not exhaust your state remedies on Ground Two, explain why: "Attorney Abandonment" Mr Castro (Petitioner) do not speak nor comprehend English language beyond possibly 12- single words. fact is, Mr Castro must rely upon a Spanish interpreter for purpose to communicate. his Education levels are below 8th grade.

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ❑ No ❑

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ❑ No ☑

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Previously Answered

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes ❑ No ❑

(4) Did you appeal from the denial of your motion or petition?

Yes ❑ No ❑

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ❑ No ❑

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Previously Answered on page 6, At 12-(d).

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Please refer to the attached supplemental pages.

GROUND THREE: See Attached Supplemental Pages

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): In Answer, Please Refer to the attached supplemental Pages.

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: See Attached Pages (supplemental).

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: See Attached Supplemental Pages

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

N/A

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) If you did not exhaust your state remedies on Ground Four, explain why: N/A

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: SAME As Page 6 at 12(a)

Name and location of the court where the motion or petition was filed: SAME

Docket or case number (if you know): SAME

Date of the court's decision: SAME

Result (attach a copy of the court's opinion or order, if available): Please Refer To The Attached Documentation in supplement.

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Previously Answered

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: Previously Answered under 12-(d).

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☑

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: SAME Answer AS stated on page 3 AT (b).

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: SAME Answer As stated on page 3, at (b).

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☑

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☑

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Unknown

(b) At arraignment and plea: Unknown

(c) At trial: Gerald A. Lord, Esq.

(d) At sentencing: Gerald A. Lord, Esq.

(e) On appeal: Jailhouse Assistance on behalf of Mr. Castro, in the filing of Post-Sentence Motion / Direct Appeal, submitted in pro se capacity

(f) In any post-conviction proceeding: John M. Hammes, Esq.

(g) On appeal from any ruling against you in a post-conviction proceeding: Jail-house Litigator on behalf of Mr. Castro, pro se.

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.***

Respectfully may the Court undertake Judicial guidance in regards to discussion as presented and Addressed throughout this petition in support of Mr. Castro's position establishing cause and prejudice aswell a fundamental miscarriage of Justice to excuse any default. One relevant factor is that the third Circuit Court of Appeals has previously recognized an important observation ["That Mr. Castro respectfully ask this U.S District Court To Consider"], being, those evident of a mental impairment. Noting Mr. Castro's Limited education and Language disadvantage. in Naca v. Frank, 264 F. 3d (310 3rd Cir. 2001) the Court Held; "Ongoing mental incompetence coupled with Attorney Abandonment may toll the "AEDPA" statue of Limitations in some Circumstance's." Also Mr. Castro seek to move forward per the U.S. Supreme Ct. decisional mandate in Martinez v. Ryan, 2012 U.S. Lexis 2317 566 U.S. [illegible] Allowing "first Time" equitable right to effective Assistance of Post Conviction Counsel. - And - McQuiggin v. Perkins, 569 U.S. — (2013). Holding "that Actual innocence, if proven, serves as A Gateway to pass/excuse procedural bar." A claim amplified within the body of this petition. Due to legal restrictions beyond Mr. Castro's Control and understanding he has Acted with diligence to the best of his Ability in plea for entitlement to equitable tolling and Review on the Merits of his Claims. Another Relevant factor is that Mr. Castro is confined in SCI-Greene and is only permitted to seek Legal Assistance "if Available" at the Law Library once A week per prison policy. Mr. Castro is a Layperson of the Law he has no legal expertise nor any special competence such as studies or diplomas pertaining to legalese as required to conduct legal battle [illegible] fending off professional opposition that the commonwealth's attorney's may chose to deploy. It is under these circumstances in which Mr. Castro must somehow fashion A comprehensive / Legitimate writ of Habeas Corpus. Moreover under a claim "inter Alia" of Actual innocence This Court may hold this action in Abeyance, Assign an Attorney in the interest of Justice pending an Amendment by Requested Counsel on behalf of Mr. Jose Albert Castro. Petitioner.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: New Trial with issuance of an order to Bar any further Prosecution. "or Alternative, Grant De Novo Review and Evidentiary Hearing.

or any other relief to which petitioner may be entitled.

____
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on September-13-15 (month, date, year).

Executed (signed) on 9-13-15 (date).

[signature]
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. for the Court's information please find Mr. Castro's signature attested hereto. Mr. Castro was compelled to proceed in pro se capacity. wherefore I, William Wallace Jr. #AJ-0568 assisted Mr. Castro in preparing this writ of Habeas Corpus due to his illiteracy in the English language.

* * * * *

Seriously Submitted
on behalf of Jose A. Castro

/s/ William Wallace Jr.
William Wallace Jr.
Prison #AJ-0568
Jail house Assistant

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SEP 21 2015

PER ____________
DEPUTY CLERK